

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

<p>ROSELENE SANON and NEMI SANON (DOB: 01-01-69), Individually and as Administrator of the ESTATE OF NEHMSON D. SANON (DOB: 05-26-95); and PAULETTE CEZIL POGUE (DOB: 06-03-63), Individually and as Administrator of the ESTATE OF GAEL CEZIL CHRISPIN (DOB: 05-04-96);</p> <p>Plaintiffs,</p> <p>v.</p> <p>CITY OF PELLA, IOWA</p> <p>Defendant.</p>	<p>CASE NO. <b>4:12-cv-122</b></p> <p><b>COMPLAINT AND JURY DEMAND</b></p>
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COMES NOW the Plaintiffs Roselene Sanon and Nemi Sanon, Individually and as Administrator of the Estate of Nehmson D. Sanon and Paulette Cezil Pogue, Individually and as Administrator of the Estate of Gael Cezil Chrispin and for their causes of action against Defendant City of Pella:

**INTRODUCTION**

1. This is an action under 42 U.S.C. § 1983 challenging the Defendant City of Pella's violation of Plaintiffs' rights under the Fourteenth Amendment to the United States Constitution.

**JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1332.

3. Venue is appropriate in this judicial district pursuant to 28 U.S.C. § 1391(b) in that Defendant does business in this judicial district and the events giving rise to this claim occurred in this district.

**PARTIES**

4. At all times material hereto, Plaintiffs Nemi Sanon and Roselene Sanon were citizens and residents of Jackson County, Missouri and the natural parents of decedent Nehmson D. Sanon. Plaintiff Nemi Sanon is the duly appointed and qualified Administrator of the Estate of Nehmson D. Sanon.

5. At all times material hereto, decedent Nehmson D. Sanon was a citizen and resident of Jackson County, Missouri.

6. At all times material hereto, Plaintiff Paulette Cezil Pogue was a citizen of Haiti lawfully residing in Jackson County, Missouri and the natural parent of decedent Gael Cezil Chrispin. Plaintiff Paulette Cezil Pogue is the duly appointed and qualified Administrator of the Estate of Gael Cezil Chrispin.

7. At all times material hereto, decedent Gael Cezil Chrispin was a citizen of Haiti lawfully residing in Jackson County, Missouri.

8. At all times material hereto, Defendant City of Pella was a municipal corporation organized under the laws of the state of Iowa.

**FACTUAL BACKGROUND**

9. At all times material Defendant City of Pella owned and operated the Pella Aquatic Center located in Pella, Marion County, Iowa.

10. Construction work at the Pella Aquatic Center began in 2003 and was completed and opened to the public on July 3, 2004.

11. Plaintiffs' decedents Nehmson Sanon and Gael Cezil Chrispin attended a camp beginning July 12, 2010 at Central College in Pella, Iowa coordinated by the Fellowship of Christian Athletes ("FCA").

12. On July 14, 2010, the FCA rented the Pella Aquatic Center from the City of Pella for a pool party for the participants attending the athletic camp. The pool party took place between 8:30 p.m. and 9:30 p.m.

13. On July 14, 2010, the City of Pella provided lifeguards for the FCA pool party; which was attended by approximately 175 children and 21 FCA camp counselors.

14. At the start of the FCA pool party on July 14, 2010 the water clarity in the main pool at the Pella Aquatic Center was very poor such that the main drain of the pool was not visible.

15. On July 14, 2010, the underwater pool lights in the main pool were functioning, but were not turned on.

16. On July 14, 2010, Plaintiffs' decedents Nehmson Sanon and Gael Cezil Chrispin were in the main pool at or near the drop slide located in the thirteen foot deep end.

17. On July 14, 2010, Plaintiffs' decedents Nehmson Sanon and Gael Cezil Chrispin drowned. Their bodies were eventually found in the thirteen foot deep end of the pool near the main drain.

### **COUNT I**

#### **ESTATES OF SANON AND CHRISPIN**

#### **DUE PROCESS VIOLATIONS**

18. The Fourteenth Amendment of the United States Constitution guarantees that no person shall be deprived of life, liberty, or property, without due process of law.

19. Defendant City of Pella violated the due process rights of Plaintiffs' decedents by engaging in the following conduct:

- a. Failing to turn on the underwater pool lights despite direct knowledge that they were functioning;
- b. Failing to have adequate overhead and underwater lighting;
- c. Failing to maintain water clarity in the pool such that the main drain of the pool was not visible.
- d. Allowing children, including Plaintiff's decedents, to enter the deep end of the pool at night when the underwater lights were not turned on;
- e. Allowing the pool to remain open and permitting children, including Plaintiff's decedents, to enter the pool when the main drain was not visible due to poor water clarity.

20. The City of Pella's conduct put the Plaintiffs' decedents at a significant risk of serious and immediate injury or death.

21. The risks and dangers of the aforesaid conduct were obvious and known to the City of Pella.

22. The conduct of the City of Pella was grossly negligent or deliberate and consciously indifferent to the Plaintiffs' decedents' safety and wellbeing and violated their right to life, safety, and happiness under the Fourteenth Amendment.

23. The unconstitutional conduct of the City of Pella was the proximate cause of the tragic and untimely deaths of Plaintiffs' decedents Nehmson D. Sanon and Gael Cezil Chrispin.

24. Plaintiffs, Nemi Sanon, as Administrator of the Estate of Nehmson D. Sanon, and Paulette Cezil Pogue as Administrator of the Estate of Gael Cezil Chrispin have been damaged and are entitled to full and complete compensation for all damages allowed by law.

25. Plaintiffs' decedents Nehmson D. Sanon and Gael Cezil Chrispin suffered physical and mental pain, anguish, loss of enjoyment of life and premature death.

26. The Estate of Nehmson D. Sanon and the Estate of Gael Cezil Chrispin have sustained damage for the loss of accumulations to their Estates and funeral and burial expenses as a result of their premature deaths.

WHEREFORE, Plaintiffs, Nemi Sanon as Administrator of the Estate of Nehmson D. Sanon and Paulette Cezil Pogue as Administrator of the Estate of Gael Cezil Chrispin demand judgment against Defendant in an amount adequate to fully and fairly compensate them for the damages alleged herein, together with attorney fees and the costs of this action, for interest as allowed law and for such other appropriate relief as the Court finds just and equitable.

## **COUNT II**

### **ROSELENE AND NEMI SANON -DUE PROCESS VIOLATION**

27. The Fourteenth Amendment of the United States Constitution guarantees that no person shall be deprived of life, liberty, or property, without due process of law.

28. Defendant City of Pella violated the due process rights of Plaintiffs Roselene and Nemi Sanon by engaging in the following conduct:

- a. Failing to turn on the underwater pool lights despite direct knowledge that they were functioning;
- b. Failing to have adequate overhead and underwater lighting;
- c. Failing to maintain water clarity in the pool such that the main drain of the pool was not visible.
- d. Allowing children, including Plaintiff's decedent, to enter the deep end of the pool at night when the underwater lights were not turned on;

e. Allowing the pool to remain open and permitting children, including Plaintiff's decedent, to enter the pool when the main drain was not visible due to poor water clarity.

29. The City of Pella's conduct put the Plaintiff's decedent at a significant risk of serious and immediate injury or death.

30. The risks and dangers of the aforesaid conduct were obvious and known to the City of Pella.

31. The conduct of the City of Pella was grossly negligent or deliberate and consciously indifferent to the Plaintiff's decedent safety and wellbeing and violated his right to life, safety, and happiness under the Fourteenth Amendment.

32. The unconstitutional conduct of the City of Pella was the proximate cause of the tragic and untimely deaths of Plaintiff's decedent Nehmson D. Sanon.

33. As a direct and proximate result of the conduct of Defendant aforesaid, Plaintiffs Nemi Sanon and Roselene Sanon have been deprived of the love, affection, comfort, services, society, companionship, and consortium of their son Nehmson Sanon.

34. Plaintiffs Nemi and Roselene Sanon, have been damaged and are entitled to full and complete compensation for all damages allowed by law.

WHEREFORE, Plaintiffs, Nemi Sanon and Roselene Sanon demand judgment against Defendant in an amount adequate to fully and fairly them for the damages alleged herein, together with attorney fees and the costs of this action, for interest as allowed law and for such other appropriate relief as the Court finds may be just and equitable.

**COUNT III**

**PAULETTE CEZIL POGUE -DUE PROCESS VIOLATION**

35. The Fourteenth Amendment of the United States Constitution guarantees that no person shall be deprived of life, liberty, or property, without due process of law.

36. Defendant City of Pella violated the due process rights of Plaintiff Paulette Cezil Pogue by engaging in the following conduct:

- a. Failing to turn on the underwater pool lights despite direct knowledge that they were functioning;
- b. Failing to have adequate overhead and underwater lighting;
- c. Failing to maintain water clarity in the pool such that the main drain of the pool was not visible.
- d. Allowing children, including Plaintiff's decedent, to enter the deep end of the pool at night when the underwater lights were not turned on;
- e. Allowing the pool to remain open and permitting children, including Plaintiff's decedent, to enter the pool when the main drain was not visible due to poor water clarity.

37. The City of Pella's conduct put the Plaintiff's decedent at a significant risk of serious and immediate injury or death.

38. The risks and dangers of the aforesaid conduct were obvious and known to the City of Pella.

39. The conduct of the City of Pella was grossly negligent or deliberate and consciously indifferent to the Plaintiff's decedent safety and wellbeing and violated his right to life, safety, and happiness under the Fourteenth Amendment.

40. The unconstitutional conduct of the City of Pella was the proximate cause of the tragic and untimely deaths of Plaintiff's decedent Gael Cezil Chrispin.

41. As a direct and proximate result of the conduct of Defendant aforesaid, Plaintiff Paulette Cezil Pogue has been deprived of the love, affection, comfort, services, society, companionship, and consortium of her son Gael Cezil Chrispin.

42. Plaintiff Paulette Cezil Pogue has been damaged and is entitled to full and complete compensation for all damages allowed by law.

WHEREFORE, Plaintiff Paulette Cezil Pogue demands judgment against Defendant in an amount adequate to fully and fairly her for the damages alleged herein, together with attorney fees and the costs of this action, for interest as allowed law and for such other appropriate relief as the Court finds just and equitable.

**JURY DEMAND**

Plaintiffs hereby demand a trial by jury in this matter.

/s/ Thomas J. Duff

THOMAS J. DUFF  
DUFF LAW FIRM, P.L.C.  
The Griffin Building  
319 Seventh Street, Suite 600  
Des Moines, Iowa 50309-3826  
Telephone: (515) 283-1111  
Fax: (515) 282-0477  
Email: [tom@tdufflaw.com](mailto:tom@tdufflaw.com)

ROXANNE BARTON CONLIN  
ROXANNE CONLIN & ASSOCIATES, P.C.  
The Griffin Building  
319 Seventh Street, Suite 600  
Des Moines, IA 50309  
Phone: (515) 283-1111  
Fax: (515) 282-0477  
Email: [roxlaw@aol.com](mailto:roxlaw@aol.com),  
cc: [ldg@roxanneconlinlaw.com](mailto:ldg@roxanneconlinlaw.com)



ATTORNEYS FOR PLAINTIFF

Original filed.

**CERTIFICATE OF SERVICE**

I hereby certify that on **MARCH 22, 2012**, I electronically filed the foregoing with the Clerk of Court using the ECF system.

/s/ Thomas J. Duff

THOMAS J. DUFF

DUFF LAW FIRM, P.L.C.